

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HOLLY J. GREENLAND,	)	
	)	No. CV-10-359-JPH
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

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BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on February 3, 2012 (ECF Nos. 24, 29). Attorney Maureen J. Rosette represents Plaintiff; Special Assistant United States Attorney Brett E. Eckelberg represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge (ECF No. 7). On January 23, 2012, Plaintiff filed a reply (ECF No. 31). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's motion for summary judgment (ECF No. 29).

**JURISDICTION**

Plaintiff protectively applied for supplemental security income (SSI) and disability insurance benefits (DIB) on May 20, 2006, alleging onset as of May 27, 1997 (SSI - Tr. 138-141; DIB - Tr. 142-145). The applications were denied initially and on reconsideration (Tr. 84-87, 90-93). Administrative Law Judge (ALJ)

1 Robert Chester held a continued hearing<sup>1</sup> on June 2, 2009.  
2 Plaintiff, represented by counsel, and a vocational expert  
3 testified (Tr. 35-70). On July 10, 2009, the ALJ issued an  
4 unfavorable decision (Tr. 12-26). On September 17, 2010, the  
5 Appeals Council denied review (Tr. 1-4). Therefore, the ALJ's  
6 decision became the final decision of the Commissioner, which is  
7 appealable to the district court pursuant to 42 U.S.C. § 405(g).  
8 Plaintiff filed this action for judicial review on October 15,  
9 2010 (ECF Nos. 1,4).

#### 10 STATEMENT OF FACTS

11 Because the facts have been presented in the administrative  
12 hearing transcript, the ALJ's decision, and the briefs of the  
13 parties, they are only briefly summarized here.

14 Plaintiff was 24 years old at onset and 36 at the June 2009  
15 hearing. She earned a GED and completed "four plus" years of  
16 college but did not earn a degree (Tr. 41-43). She has worked as a  
17 certified nursing assistant (CNA), cashier, home care provider,  
18 and babysitter (Tr. 41-43, 55-57, 62). She initially alleged  
19 disability due to bipolar disorder, post-traumatic stress disorder  
20 (PTSD), and low back pain (Tr. 187).

21 Plaintiff testified she has been disabled since May 27, 1997,  
22 due to problems sitting, standing, and lifting. She has asthma,  
23 PTSD, and bipolar disorder (Tr. 45-48). She experiences  
24 nightmares, sleep and memory problems, fatigue, and hand tremors  
25 (Tr. 50-53). She testified she is able to sit 20 to 25 minutes,

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27 <sup>1</sup>The matter was continued so Plaintiff could obtain counsel  
28 (Tr. 76).

1 stand less than 30 minutes, walk four to five blocks, and lift  
2 five pounds (Tr. 51-52).

3 **SEQUENTIAL EVALUATION PROCESS**

4 The Social Security Act (the Act) defines disability as the  
5 "inability to engage in any substantial gainful activity by reason  
6 of any medically determinable physical or mental impairment which  
7 can be expected to result in death or which has lasted or can be  
8 expected to last for a continuous period of not less than twelve  
9 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also  
10 provides that a Plaintiff shall be determined to be under a  
11 disability only if any impairments are of such severity that a  
12 Plaintiff is not only unable to do previous work but cannot,  
13 considering Plaintiff's age, education and work experiences,  
14 engage in any other substantial gainful work which exists in the  
15 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
16 Thus, the definition of disability consists of both medical and  
17 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
18 (9<sup>th</sup> Cir.2001).

19 The Commissioner has established a five-step sequential  
20 evaluation process for determining whether a person is disabled.  
21 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
22 is engaged in substantial gainful activities. If so, benefits are  
23 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,  
24 the decision maker proceeds to step two, which determines whether  
25 Plaintiff has a medically severe impairment or combination of  
26 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

27 If Plaintiff does not have a severe impairment or combination  
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1 of impairments, the disability claim is denied. If the impairment  
2 is severe, the evaluation proceeds to the third step, which  
3 compares Plaintiff's impairment with a number of listed  
4 impairments acknowledged by the Commissioner to be so severe as to  
5 preclude substantial gainful activity. 20 C.F.R. §§  
6 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
7 App. 1. If the impairment meets or equals one of the listed  
8 impairments, Plaintiff is conclusively presumed to be disabled.  
9 If the impairment is not one conclusively presumed to be  
10 disabling, the evaluation proceeds to the fourth step, which  
11 determines whether the impairment prevents Plaintiff from  
12 performing work which was performed in the past. If a Plaintiff is  
13 able to perform previous work, that Plaintiff is deemed not  
14 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
15 this step, Plaintiff's residual functional capacity (RFC)  
16 assessment is considered. If Plaintiff cannot perform this work,  
17 the fifth and final step in the process determines whether  
18 Plaintiff is able to perform other work in the national economy in  
19 view of Plaintiff's residual functional capacity, age, education  
20 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
21 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

22 The initial burden of proof rests upon Plaintiff to establish  
23 a *prima facie* case of entitlement to disability benefits.  
24 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir.1971); *Meanel v.*  
25 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir.1999). The initial burden is  
26 met once Plaintiff establishes that a physical or mental  
27 impairment prevents the performance of previous work. The burden  
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1 then shifts, at step five, to the Commissioner to show that (1)  
2 Plaintiff can perform other substantial gainful activity and (2) a  
3 "significant number of jobs exist in the national economy" which  
4 Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
5 Cir.1984).

#### 6 STANDARD OF REVIEW

7 Congress has provided a limited scope of judicial review of a  
8 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
9 the Commissioner's decision, made through an ALJ, when the  
10 determination is not based on legal error and is supported by  
11 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
12 Cir.1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir.1999).

13 "The [Commissioner's] determination that a plaintiff is not  
14 disabled will be upheld if the findings of fact are supported by  
15 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
16 Cir.1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more  
17 than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
18 n. 10 (9<sup>th</sup> Cir.1975), but less than a preponderance. *McAllister v.*  
19 *Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir.1989); *Desrosiers v.*  
20 *Secretary of Health and Human Services*, 846 F.2d 573, 576 (9<sup>th</sup>  
21 Cir.1988). Substantial evidence "means such evidence as a  
22 reasonable mind might accept as adequate to support a conclusion."  
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations  
24 omitted). "[S]uch inferences and conclusions as the [Commissioner]  
25 may reasonably draw from the evidence" will also be upheld. *Mark*  
26 *v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir.1965). On review, the  
27 Court considers the record as a whole, not just the evidence  
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1 supporting the decision of the Commissioner. *Weetman v. Sullivan*,  
2 877 F.2d 20, 22 (9<sup>th</sup> Cir.1989)(quoting *Kornock v. Harris*, 648 F.2d  
3 525, 526 (9<sup>th</sup> Cir.1980)).

4 It is the role of the trier of fact, not this Court, to  
5 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
6 evidence supports more than one rational interpretation, the Court  
7 may not substitute its judgment for that of the Commissioner.  
8 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
9 (9<sup>th</sup> Cir.1984). Nevertheless, a decision supported by substantial  
10 evidence will still be set aside if the proper legal standards  
11 were not applied in weighing the evidence and making the decision.  
12 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
13 433 (9<sup>th</sup> Cir.1987). Thus, if there is substantial evidence to  
14 support the administrative findings, or if there is conflicting  
15 evidence that will support a finding of either disability or  
16 nondisability, the finding of the Commissioner is conclusive.  
17 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir.1987).

#### 18 ALJ'S FINDINGS

19 The ALJ found Plaintiff was insured through December 31, 2006  
20 (Tr. 12, 14). At step one, he found although Plaintiff worked at  
21 times after onset, she did not engage in substantial gainful  
22 activity (Tr. 14). At steps two and three, he found she suffers  
23 from degenerative disc disease, obesity, situational depression,  
24 symptom exaggeration, and borderline personality trait disorder,  
25 impairments that are severe but do not meet or medically equal the  
26 requirements of the Listings (Tr. 15-16). After finding Plaintiff  
27 not fully credible, ALJ Chester assessed an RFC for a range of  
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1 light work with superficial public contact (Tr. 20). At step four,  
2 relying on the VE, he found a person with Plaintiff's limitations  
3 and background could perform her past relevant work as a cashier  
4 (Tr. 25, 64). Alternatively, at step five, again relying on the  
5 VE, he found she is able to perform other work such as operating a  
6 sewing machine and telemarketing (Tr. 25-26, 66). The ALJ found  
7 Plaintiff not disabled (Tr. 26).

#### 8 ISSUES

9 Plaintiff alleges the Commissioner erred when he weighed  
10 credibility (ECF No. 25 at 22-24) and the medical evidence. She  
11 alleges she is more limited both physically and psychologically  
12 than the ALJ found.

13 Specifically, Plaintiff alleges the ALJ should have credited  
14 the opinions of treatment providers (Drs. Schliiter and Bodeau,  
15 and PA Leaf), and examiner Bray, and should not have credited  
16 examiner Goodman's opinion (ECF No. 25 at 14-17).

17 Plaintiff alleges the ALJ's psychological RFC is flawed. She  
18 asserts the ALJ: (1) should have credited the opinions of  
19 evaluators Hellekson and Severinghaus because they were the only  
20 professionals who evaluated Plaintiff before her insurance  
21 expired; (2) should have credited reviewing psychologist Gentile's  
22 opinion; and (3) gave insufficient reasons for rejecting evaluator  
23 Arnold's opinion (ECF No. 25 at 20-22).

24 The Commissioner asks the Court to affirm, asserting the  
25 ALJ's evaluation of the evidence, including Plaintiff's  
26 credibility, is free of legal error and supported by substantial  
27 evidence (ECF No. 25 at 20).

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## DISCUSSION

### A. Credibility

The ALJ considered Plaintiff's credibility when he weighed the conflicting medical evidence. Credibility determinations bear on evaluations of medical evidence when an ALJ is presented with conflicting medical opinions or inconsistency between a claimant's subjective complaints and diagnosed condition. See *Webb v. Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir.2005).

While it is the province of the ALJ to make credibility determinations, *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995), the findings must be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir.1995). "General findings are insufficient: rather the ALJ must identify what testimony not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir.1993).

The ALJ found Plaintiff less than credible because she exaggerated her symptoms on several occasions; her testimony is contradicted by the record, including her own past statements; and her activities are inconsistent with the degree of limitation alleged (Tr. 20-21).



1 Plaintiff exaggerated her symptoms (Tr. 21). In 1998 and  
2 again in March 2000, examining doctors observe "significant  
3 symptom magnification" (Tr. 256). In August 2001, examining doctor  
4 Santosh Kumar, M.D., points out Plaintiff shows "overwhelming  
5 subjective symptom magnification" (Tr. 267-268). Citing *Tonapetyan*  
6 *v. Halter*, 242 F.3d 1144, 1148 (9<sup>th</sup> Cir. 2001), the Commissioner  
7 correctly notes the tendency to exaggerate is a legitimate factor  
8 in determining credibility (ECF No. 30 at 4).

9 The ALJ points out Plaintiff stated in an undated report she  
10 is a "very good cook." She spends 30-50 minutes, three times a  
11 day, cooking. She uses a chair if it is something "that takes a  
12 while." She spends about four hours a day cooking, cleaning, and  
13 doing laundry, and needs no help. She also drives and shops (Tr.  
14 20, referring to Tr. 165-166). Plaintiff testified, however, that  
15 she is only able to bathe, groom, and dress herself, and her  
16 children perform the household chores (Tr. 49). This reason is  
17 clear, convincing, and supported by the evidence.

18 Plaintiff's activities are inconsistent with the degree of  
19 physical limitation alleged (Tr. 21). The ALJ notes Plaintiff told  
20 an examining psychologist she is able to "do everything at home,"  
21 including all chores. The only help she needed was with heavy  
22 lifting (Tr. 20, referring to Tr. 433)(September 2006), same (Tr.  
23 491-492, September 2008). In addition, the record shows Plaintiff  
24 worked several summers during the relevant period caring for her  
25 brother's children, an activity also incompatible with the extreme  
26 limitations Plaintiff described in her testimony.

27 The ALJ's reasons are clear, convincing, and supported by  
28 substantial evidence. See *Thomas v. Barnhart*, 278 F.3d 947, 958-

1 959 (9<sup>th</sup> Cir.2002)(proper factors include inconsistencies in  
2 plaintiff's statements, inconsistencies between statements and  
3 conduct, and extent of daily activities).

4 The ALJ is responsible for reviewing the evidence and  
5 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
6 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir.1989). It is the role of the  
7 trier of fact, not this court, to resolve conflicts in evidence.  
8 *Richardson*, 402 U.S. at 400. The ALJ's credibility assessment is  
9 free of error.

#### 10 **B. Standards for weighing medical opinion evidence**

11 In Social Security proceedings, the claimant must prove the  
12 existence of a physical or mental impairment by providing medical  
13 evidence consisting of signs, symptoms, and laboratory findings;  
14 the claimant's own statement of symptoms alone will not suffice.  
15 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
16 on the basis of a medically determinable impairment which can be  
17 shown to be the cause of the symptoms. 20 C.F.R. § 416.929.

18 A treating physician's opinion is given special weight  
19 because of familiarity with the claimant and the claimant's  
20 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-605 (9<sup>th</sup> Cir.  
21 1989). However. The treating physician's opinion is not  
22 "necessarily conclusive as to either a physical condition or the  
23 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
24 751 (9<sup>th</sup> Cir.1989)(citations omitted). More weight is given to a  
25 treating physician than an examining physician. *Lester v. Chater*,  
26 81 F.3d 821, 830 (9<sup>th</sup> Cir.1995). Correspondingly, more weight is  
27 given to the opinions of treating and examining physician's  
28 opinions than to nonexamining physicians. *Benecke v. Barnhart*, 379

1 F.3d 587, 592 (9<sup>th</sup> Cir.2004). If the treating or examining  
2 physician's opinions are not contradicted, they can be rejected  
3 only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
4 contradicted, the ALJ may reject an opinion if he states specific,  
5 legitimate reasons that are supported by substantial evidence. See  
6 *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463  
7 (9<sup>th</sup> Cir.1995).

8 **C. Physical limitations**

9 *1. Jena Schliiter, M.D., October 2003 and February 2004*

10 In 2003, Dr. Schliiter opined Plaintiff's ability to stand  
11 and walk were limited. She does not specify how long Plaintiff  
12 could stand and walk. She opined Plaintiff should lift no more  
13 than ten pounds (ECF No. 25 at 15-17; Tr. 681). By February 2004,  
14 Dr. Schliiter opined Plaintiff was capable of light work (Tr.  
15 285).

16 After four exams in 2006, Dr. Schliiter assessed a single  
17 limitation: Plaintiff should lift no more than 20-25 pounds. The  
18 ALJ found Plaintiff could lift 20 pounds occasionally (Tr. 19).  
19 In January, May and June of 2007, Dr. Schliiter opined Plaintiff  
20 could perform "modified work with restrictions," but none are  
21 listed (Tr. 520, 523, 526, 529, ECF No. 30 at 13-15). The ALJ  
22 accepted Dr. Schliiter's opinions which were consistent with the  
23 opinions of other doctors (Kumar, Fenner, Crowley, and  
24 Goodman)(Tr. 22, relying on Tr. 285, 520, 523, 526, 529, 532, 534,  
25 537, 540).

26 The ALJ may reject a treating doctor's contradicted opinion  
27 by stating specific, legitimate reasons that are supported by  
28 substantial evidence. See *Flaten*, 44 F.3d at 1463. Moreover, the

1 ALJ may reject any opinion that is brief, conclusory, and  
2 inadequately supported by clinical findings. *Bayliss v. Barnhart*,  
3 427 F.3d 1211, 1216 (9<sup>th</sup> Cir.2005). The ALJ properly credited the  
4 parts of Dr. Schliiter's opinions supported by the opinions of  
5 other treating and examining doctors.

6 *2. Valerie Bodeau, M.D.*

7 Similarly, Plaintiff alleges the ALJ should have accepted  
8 treating Dr. Bodeau's November 2004 opinion that Plaintiff could  
9 stand and walk two hours a day, and her opinion three months  
10 later, in February. At that time Dr. Bodeau opined Plaintiff's  
11 standing and walking were limited, in an unspecified way, and her  
12 lifting was limited to ten pounds (Tr. 651, 657). The Commissioner  
13 answers that the ALJ rejected these contradicted limitations for  
14 the specific, legitimate reason that they conflicted with the  
15 opinions of other treating and examining doctors (ECF No. 30 at  
16 14-15).

17 The Commissioner is correct. The ALJ's reasons are  
18 appropriate and supported by substantial evidence. Examining Drs.  
19 Crowley and Fenner, in March 2000,<sup>2</sup> found Plaintiff could perform  
20 four light and two medium-exertion jobs (Tr. 256, 258-263). In  
21 August 2001, examining Dr. Kumar assessed an RFC for light to  
22 medium work (Tr. 268). Dr. Fenner, January 2003: RFC to work light  
23 to medium duty jobs (Tr. 276); treating Dr. Schliiter, January  
24 2004: RFC to perform light work (Tr. 285); and examining Dr.  
25 Goodman, October 2008: RFC to perform light work (Tr. 503).

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27 <sup>2</sup>The Commissioner misstates the date as March 2002 (ECF No.  
28 30 at 6, citing Tr. 252, 256, at 8, citing Tr. 256, 258-263, at  
11, citing Tr. 240-263, and at 15).

1       3. *Examiners Robert Bray, M.D., and Steven Goodman, M.D.*

2       Plaintiff alleges the ALJ failed to credit Dr. Bray's 2006  
3       opinion, and should not have credited Dr. Goodman's because it was  
4       given two years after Plaintiff's last insured date (ECF No. 25 at  
5       15-16). The Commissioner responds, correctly, that Dr. Goodman's  
6       assessed RFC for light work is consistent with the bulk of the  
7       other medical opinions during the relevant period (ECF No. 30 at  
8       12-13).

9       On October 14, 2006, Dr. Bray opined Plaintiff could walk or  
10      stand two hours out of eight, in part due to expected soreness  
11      following recent right foot surgery (Tr. 457-458). Clearly Dr.  
12      Bray's assessment is of less value because it was rendered shortly  
13      after surgery. The ALJ properly weighed these opinions.

14      4. *Stephen Leaf, PA*

15      Plaintiff alleges the ALJ should have considered and  
16      discussed treatment provider Mr. Leaf's opinion in June of 2005  
17      that she is "markedly disabled," as well as his June 2006 RFC for  
18      sedentary work (ECF No. 25 at 14-17; Tr. 289-292, 355-358).  
19      According to the Commissioner, any error by the ALJ in failing to  
20      discuss these opinions is harmless because Mr. Leaf's opinion is  
21      contradicted by numerous other professionals (see above), and he  
22      is not an acceptable medical source (ECF No. 30 at 15-18).

23      The Commissioner is correct that Mr. Leaf is not an  
24      acceptable source. See 20 C.F.R. §§ 404.1513, 404.1527, 416.913,  
25      416.927. In addition, even if the ALJ erred by failing to discuss  
26      Mr. Leaf's opinion, it is clearly harmless since the opinion is  
27      refuted by the bulk of the evidence from acceptable sources.

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1 **D. Psychological limitations**

2 Plaintiff alleges the ALJ erred when he weighed the opinions  
3 of several doctors and psychologists (ECF No. 30 at 17-22). First,  
4 she alleges the ALJ should have credited the opinions of the only  
5 professionals who examined her before her insurance expired: Drs.  
6 Hellekson in June 2005 (Tr. 279-282) and Severinghaus in September  
7 2006 (Tr. 431-435). In the same vein, she alleges the ALJ should  
8 not have relied on examiner Toews' opinion given 21 months after  
9 her insurance expired. Incongruently, Plaintiff alleges the ALJ  
10 gave insufficient reasons for rejecting examiner Arnold's 2009  
11 opinion, although Dr. Arnold also gave his opinion several years  
12 after Plaintiff's last insured date (Tr. 867-875). Finally, she  
13 alleges the ALJ failed to "provide any reasoning as to why he  
14 basically ignored" reviewing psychologist Gentile's September 2006  
15 opinion (ECF No. 25 at 22-24; Tr. 436-452, 867-875).

16 *1. Carla Hellekson, M.D.*

17 Dr. Hellekson examined Plaintiff for the Department of Social  
18 and Health Services in June 2005. She assessed severe and marked  
19 limitations, and opined Plaintiff should not return to work at  
20 that time. She did not expect substantial improvement in the near  
21 future. Significantly, Dr. Hellekson observed medications were not  
22 currently stabilized (Tr. 280-282).

23 The ALJ gave this opinion little weight because there is no  
24 indication Dr. Hellekson tested Plaintiff, whereas both Drs.  
25 Severinghaus and Toews performed several tests (Tr. 24). Second,  
26 the ALJ notes that if Dr. Hellekson treated Plaintiff, there are  
27 no medical records supporting her opinion. Both are specific,  
28 legitimate reasons supported by substantial evidence for the ALJ's

1 rejection of Dr. Hellekson's contradicted opinion. See *Bayliss v.*  
2 *Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir.2005)(ALJ may properly  
3 reject any medical opinion that is brief, conclusory, and  
4 inadequately supported by clinical findings).

5 2. *John Severinghaus, Ph.D., September 15, 2006*

6 Dr. Severinghaus assessed a GAF of 47-52 indicating moderate  
7 to serious symptoms or functional impairments (Tr. 434). The ALJ  
8 states:

9 Dr. Severinghaus found the claimant to exhibit mild mental  
10 glitches and errors that were evident with regard to her  
11 cognitive mental status and that she was currently under  
12 significant situational stress with her children being  
13 placed by CPS. Dr. Severinghaus opined that the claimant's  
14 memory functioning, problem-solving and abstract thinking  
15 to be mildly to moderately affected at times by stress,  
16 but that she was not seriously or extremely impaired.  
17 Dr. Severinghaus also opined that the claimant's  
18 interpersonal functioning was moderately impaired  
19 currently by the stress she was experiencing and  
20 tearfulness, but that her pace and persistence at  
21 home doing chores was not significantly impaired  
22 and that she was able to manage funds.

23 (Tr. 23, Tr. 431-435).

24 The ALJ accurately summarized Dr. Severinghaus's findings.  
25 Because Dr. Severinghaus points out he assessed Plaintiff at a  
26 time she was undergoing a great deal of stress, and he did not  
27 believe even then she would be more than moderately affected, the  
28 ALJ was not required to find moderate functional impairments  
represent Plaintiff's normal functioning. In addition, the opinion  
does not indicate moderately to seriously impaired functioning for  
the required twelve month duration.

3. *John Arnold, Ph.D., May 2009*

Dr. Arnold evaluated Plaintiff in 2009 at her attorney's  
request (Tr. 867-875). He opined MMPI-2 results were invalid due

1 to an elevated score indicating over-reporting of symptoms. Dr.  
2 Arnold felt this suggested a plea for help rather than a clear  
3 indication of malingering. Nonetheless, he stated his opinion  
4 "would probably be best viewed with some degree of caution" (Tr.  
5 869). The ALJ heeded the warning and gave the contradicted opinion  
6 little weight. This was appropriate.

7 4. *Mary Gentile, Ph.D., September 20, 2006*

8 Plaintiff suggests the ALJ "basically ignored" Dr. Gentile's  
9 opinion (ECF No. 25 at 21; Tr. 436-452). As the Commissioner  
10 correctly points out, the ALJ limited Plaintiff to superficial  
11 public contact, thereby incorporating Dr. Gentile's opinion  
12 Plaintiff's social interaction is moderately limited (ECF No. 30  
13 at 19-20).

14 With respect to Dr. Gentile's contradicted limitations in  
15 attention and concentration, the ALJ properly credited the 2008  
16 opinion of examining psychologist Jay Toews, Ed.D., and of  
17 Plaintiff, rather than the agency reviewing psychologist. Dr.  
18 Toews opined both attention and concentration are intact (Tr.  
19 493). The Commissioner observes Plaintiff has reported she can pay  
20 attention as "long as you want if on my meds." (ECF No. 30 at 20;  
21 Tr. 168). In addition, Dr. Toews assessed mild to moderate  
22 situational depression and probable symptom exaggeration, the  
23 latter consistent with most of the evidence. He assessed a  
24 probable GAF of 65, indicating mild symptoms or mild difficulty  
25 functioning (Tr. 493-494).

26 The ALJ properly considered the evidence of psychological  
27 limitation.

28 The ALJ is responsible for reviewing the evidence and



1 resolving conflicts or ambiguities in testimony. *Magallanes*, 881  
2 F.2d at 751 (9<sup>th</sup> Cir.1989). Here, the ALJ provided clear and  
3 convincing reasons for finding Plaintiff's allegations not fully  
4 credible. His assessment of the medical and other evidence is  
5 supported by the record and free of harmful error.

6 **CONCLUSION**

7 Having reviewed the record and the ALJ's conclusions, this  
8 court finds that the ALJ's decision is free of legal error and  
9 supported by substantial evidence.

10 **IT IS ORDERED:**

11 1. Defendant's Motion for Summary Judgment (**ECF No. 29**) is  
12 **GRANTED.**

13 2. Plaintiff's Motion for Summary Judgment (**ECF No. 24**) is  
14 **DENIED.**

15 The District Court Executive is directed to file this Order,  
16 provide copies to counsel for the parties, enter judgment in favor  
17 of Defendant, and **CLOSE** this file.

18 DATED this 16th day of February, 2012.

19  
20 s/ James P. Hutton

21 JAMES P. HUTTON  
22 UNITED STATES MAGISTRATE JUDGE  
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